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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA, No. CR 14-0196 CRB
13 Plaintiff,
14 vs. RESPONSE TO UNITED STATES'
15 KWOK CHEUNG CHOW, Date: August 20, 2014
16 Defendant. Time: 2:00 p.m.
17 _____/ Hon. Judge Breyer

18 The Government's Opposition is insufficient because the
19 Motion did not require leave to file and the Government's
20 continued assertion that redaction is not feasible is patently
21 false as evidenced by the thousands of redaction in Discovery.

22 I.
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**NO LEAVE IS REQUIRED FOR A MOTION FOR
RECONSIDERATION IN A CRIMINAL MATTER PURSUANT
TO CRIMINAL LOCAL RULES AND FEDERAL RULES OF
CRIMINAL PROCEDURE**

26 Criminal Local Rules are controlling based on the plain
27 language of the rules. Criminal Local Rule 2-1 states in part
28 "The provisions of the Civil Local Rules of the Court shall

1 apply to criminal actions and proceedings, except where they may
 2 be inconsistent with these criminal local rules, the Federal
 3 Rules of Criminal Procedure or provisions of law specifically
 4 applicable to criminal cases." (emphasis added). Criminal Local
 5 Rule 12-1 states that motions shall comply with Federal Rule of
 6 Criminal Procedure 12 and Criminal Local Rule 47-1. Federal
 7 Rule of Criminal Procedure 12 (b) (1) states : "A party may raise
 8 by pretrial motion any defense, objection, or request that the
 9 court can determine without a trial on the merits." Criminal
 10 Local Rule 47-1 titled "Motion in Criminal Case" in relevant
 11 part states that a motion in a criminal matter must be in
 12 writing and calendared with the assigned judge. Criminal Local
 13 Rule 47-2 discusses various requirements of criminal motions and
 14 specifically lists various Civil Local Rules which are adopted
 15 for criminal motions. These Civil Local Rule adoptions address
 16 issues such as formatting, not leave.

17 Here, Defendant's Motion for Reconsideration is a criminal
 18 motion addressing a protective order in a criminal case brought
 19 properly under the local rules applicable here: Criminal Local
 20 Rules. First, the leave requirement of Civil Local Rule 7-9 is
 21 inconsistent with the Criminal Local Rules because there are no
 22 similar requirements in Criminal Local Rules 12-1, 47-1, and
 23 47-2. Therefore, pursuant to Criminal Local Rule 2-1, Criminal
 24 Local Rules are controlling because there is an inconsistency.
 25 Second, Defendant's Motion raised issues surrounding the
 26 Protective Order in a criminal case which can be adjudicated
 27 without a trial on the merits, so it fits squarely within
 28 Federal Rule of Criminal Procedure 12(b) (1). Lastly,

1 Defendant's Motion fits within all parameters of Criminal Local
 2 Rules 12-1, 47-1, and 47-2.

3 Requiring a criminal defendant to abide by a civil local
 4 rule in a criminal matter is analogous to requiring a Patent
 5 Litigator to abide by Admiralty and Maritime local rules merely
 6 because there is similar language in the title of the motion.
 7 Furthermore, the Protective Order is a matter of extreme
 8 importance and the issue must be addressed as soon as possible
 9 so as not to prejudice all defendants in this case any further.
 10 Therefore, the Government's procedural objection should be
 11 disregarded.

12 **II.**

13 **THE GOVERNMENT'S ARGUMENT THAT REDACTION OF
 14 DOCUMENTS WAS NOT FEASIBLE IS DISINGENUOUS
 15 BECAUSE THEY MADE THOUSANDS OF REDACTIONS TO
 16 DISCOVERY ALREADY**

17 The Government's continued assertions regarding the
 18 unfeasibility of redaction is absolutely baffling and highly
 19 concerning. The Government turned over to defense counsel
 20 approximately 1,300 pages of discovery documents relating to
 21 Defendant Kwok Cheung Chow.¹ Based on defense counsel's review
 22 of those specific documents alone, there are *more than 1,000*
 23 *redactions.*² In their Opposition, the Government argues that it
 24 would have been unfeasible to redact search warrant and wiretap
 25 applications yet they reflect redactions as well.³ It becomes

26 _____
 27 ¹ See Bates Numbers US607954 through US609347.

28 ² The actual number could be close to or above 2,000, but to
 29 conserve time a low estimate has been used.

30 ³ See Bates Numbers US400357, US400525, US400539, US400674,
 31 US400688, US401187, and US401202.

1 very hard to reconcile how the Government can argue in good
 2 faith infeasibility of redaction, yet they have managed to make
 3 over 1,000 redactions in approximately 1,300 documents.⁴ Not
 4 only is redaction theoretically possible, but it already
 5 occurred. Therefore, this Protective Order should be
 6 reconsidered for the reasons stated in the Motion.

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CONCLUSION

9 United States v. Chow is a case with incredible
 10 implications to the citizens of this nation, but what may not be
 11 obvious to the Government is that defense counsel are
 12 accountable to their clients, all of whom are presumed innocent.
 13 Many clients in this case are facing potential life sentences
 14 and what may seem an insignificant issue to some of those
 15 prosecuting this case is of incredible importance to our clients
 16 and to their families, who stand by their phones every minute of
 17 every day, waiting for case updates on their loved ones.

18 When the Government repeatedly makes significant errors, or
 19 improperly presents issues such as discovery, or states
 20 redaction is not feasible when it has already occurred, the
 21 nightly phone call to our clients' loved ones becomes a
 22 difficult burden to bear. All a mother can hope for when her
 23 son or daughter is facing a life sentence is fairness,
 24 accountability, and integrity at the hands of the United States
 25 prosecutor. Judicial intervention is necessary in this matter

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28 ⁴ The 1,300 document figure does not include warrant and wiretap
 affidavits. Also, the estimate is based only on the documents
 reviewed so far. The more accurate number of redactions could
 be even higher.

1 and the Motion for Reconsideration should be granted.

2 DATED: August 8, 2014 Respectfully Submitted,

/s/CURTIS L. BRIGGS

J. TONY SERRA
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GREGORY M. BENTLEY
Attorneys for Defendant
KWOK CHEUNG CHOW

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DECLARATION OF COUNSEL

I, CURTIS L. BRIGGS, declare:

3 I am an attorney licensed to practice in the state of
4 California and the Northern District of California, and the
5 attorney of record for Defendant herein, KWOK CHEUNG CHOW. The
6 statements in the accompanying Response to United States'
7 Opposition to Defendant's Motion for Reconsideration are true
8 and correct to the best of my knowledge, based on my information
9 and belief.

10 I declare under penalty of perjury that the foregoing true
11 and correct. Executed August 8, 2014, at San Francisco,
12 California.

/s/ CURTIS L. BRIGGS
CURTIS L. BRIGGS